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CC Docket # 96-1



COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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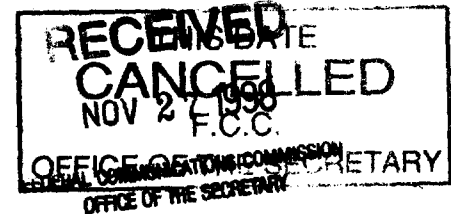
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October 16, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554



Dear Chairman Kennard:

I am writing to urge the Commission to reconsider its June 5, 1998 decision which prohibits schools and libraries with contracts expiring before December 31, 1998 to benefit from universal services discounts until June 30, 1999. The request is made because we believe the consequences of that decision were not fully known or anticipated at the time of the decision. Without a change, schools, districts, states and libraries will suffer loss of discounts for the period January 1, 1999 through June 30, 1999, even though they have acted in good faith and within the laws of their states in making applications and contracts and contracts.

In making this request, we also want to extend to you and the Commission our commendation for the commitment you have made to establish and implement the universal service discounts. You have acted effectively in discussion after discussion to assure the program is effective. We are grateful for the opportunity to work with your office, the Common Carrier Bureau, USAC and SLC in solving the many complex problems of administration. In the spirit of our cooperative work with you, we bring this issue for resolution. As we assist applicants across the nation, we now find the June 5 decision has created a glaring issue of fairness and unintended loss that needs to be remedied.

Applicants for this program accepted and understood the June 5, 1998 decision by the Commission to change the funding year for the schools and libraries universal service support mechanisms from a calendar year cycle (January 1 - December 31) to a fiscal year cycle from July 1 - June 30. The Fifth Order on Reconsideration and Fourth Report and Order (CC Docket No. 96-45) was designed to accommodate problems of sufficient funds and timing for the first round of applications. The decision provided additional flexibility for applicants needing additional time to complete installations for internal connections.

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But, the decision also created problems for continuing discounts in the period of January 1-June 30, 1999. The Commission recognized this Order would delay discounted services for schools and libraries which chose not to apply in the first round. However, the Commission decision did not take into account that eligible and successful applicants with contracts that expired prior to the December 31, 1998 date might experience a loss of any discounts in the period January 1 through June 30, 1999. Many of these applicants, possibly numbering in the hundreds and concentrated in certain states and regions, are unable to extend the date of their competitive contracts for telecommunications and Internet services into 1999 as a result of local and/or state procurement laws.

Although otherwise eligible for discounts in the last six months of the first round and eighteen month period, these applicants are shut out of benefits because their contracts were based on a first round, twelve-month period which the Commission originally established.

Clearly, the decision unfairly penalizes those applicants which structured their contracts and bidding on the basis of the initial twelve month program year - the program year which the Commission had in place during the initial January 30 - April 15, 1998 application "window."

The Commission's decision was made approximately three months after the date an applicant could have changed its bidding to reflect the new program year. Because of this unfairness, we urge the Commission to reconsider this decision in favor of allowing these applicants the ability to receive discounts for the balance of the first round period, January 1, 1999 through June 30, 1999. In this regard, reconsideration or granting waivers to deserving applicants are appropriate.

As you reconsider your June 5, 1998 decision, we ask the Commission to place yourselves in the position of one of the affected applicants. The applicants, acting in January or February 1998, expected to open competitive bidding during the Fall/Winter of 1998, in time for the proposed second-year program start date of January 1, 1999. In order to be released from contracts for telecommunications services during the initial program window to bid for 1999, these applicants faced the prospect of paying a penalty for early-termination of an existing contract. State and local officials involved in assisting applicants assumed that eligible applicants could re-bid services in the Fall of 1998 in order to be ready for the January 1, 1999 program year.

At the time, these applicants made a reasoned, informed decision to forego one or two months of universal service discounts (from contract expiration until 12/31/98), in order to avoid paying higher, early-cancellation charges. None of the applicants knew their decision would cost them universal service support until the June 30, 1999, the end of the

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revised program year. Had they known the decision would cost them the loss of discounts over seven to nine months, rather than one to three months, their decisions would have been different. Penalizing these applicants for not "guessing" the program year would be changed *three months after* they had to apply for the window is just not fair.


As the national organization representing state education agencies, our appeal reflects the calls and concerns received from affected schools and libraries and those states whose master contracts expire in the October-December 1998 time period.

The resolution of this complex matter is essential. The Commission must recognize that in addition to these applicants who have identified this problem, many eligible applicants are currently unaware of the consequences and ramifications of the Commission's requirement to terminate discounted services for applicants that have not extended, or are prohibited from extending contracts beyond their present service contracts which end before December 31, 1998. If the problem is not fixed, you can anticipate extensive complaints of bad faith and misleading administrative practices during the coming months.

We urge, therefore, the Commission reconsider its decision in the Fifth Order on Reconsideration and Fourth Report and Order to terminate discounts when contracted services expire prior to December 31, 1998 and provide adjustments for accommodations in the period January 1-June 30, 1999. We welcome the opportunity to assist the Commission in any way possible to develop an equitable solution for these program participants. If the Commission finds it is unable to reconsider this Order and allow an extension of all existing contracts, we recommend granting waivers to deserving school and library applicants.

Thank you for your consideration of our request.

Sincerely,



Gordon M. Ambach
Executive Director

GMA:djb

cc: Kathryn C. Brown, Chief, Common Carrier Bureau, FCC
Lisa Zaina, Senior Counsel & Associate Bureau Chief Common Carrier Bureau, FCC